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Federal Communications Commission

DA 97-1976

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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Section 73.202(b)	)	MM Docket No 97-204
Table of Allotments,	)	RM-9143
FM Broadcast Stations.	)	RM-9158
(McFarland and Coalinga, California)	)	

### NOTICE OF PROPOSED RULE MAKING

Adopted: September 10, 1997

Released: September 19, 1997

Comment Date: November 10, 1997

Reply Comment Date: November 25, 1997

By the Chief, Allocations Branch:

1. The Commission considers herein two separately-filed, mutually exclusive petitions for rule making seeking the allotment of FM Channel 247A. The first petition filed on behalf of Kerner Broadcasting Company ("Kerner") requests the allotment of Channel 247A to McFarland, California (RM-9143), as that community's second local FM transmission service. The second proposal filed on behalf of James K. Zahn ("Zahn") seeks the allotment of Channel 247A to Coalinga, California (RM-9158), as that community's second local commercial FM transmission service.<sup>1</sup> Each petitioner stated an intention to apply for Channel 247A if it is allotted to their requested community.

2. A staff review of the proposal reveals that Channel 247A can be allotted to McFarland (population 7,005),<sup>2</sup> consistent with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules, provided the transmitter therefor is located at least 10.3 kilometers (6.4 miles) west of the community, utilizing in this instance, coordinates 35-40-16 and 119-20-30.<sup>3</sup> Channel 247A can be allotted to Coalinga (population 8,212) in compliance with the Commission's Rules without a site restriction, utilizing city reference coordinates at 36-08-30 and 120-21-18. However Channel 247A cannot be allotted to both communities in conformity with Section 73.207(b)(1) of the Commission's Rules. McFarland and Coalinga are located

<sup>1</sup>An application has been filed by American Educational Broadcasters, Inc. to operate on Channel 202B at Coalinga (File No. BPED-970313MC).

<sup>2</sup>Population figures cited herein were taken from the 1990 U.S. Census.

<sup>3</sup>The site restriction is required to avoid a short spacing to Station KSEQ(FM), Channel 246B, Visalia, California, at coordinates 36-38-08 and 118-56-32, and well as to Station KRME(FM), Channel 249A, Shafter, California, at coordinates 35-25-10 and 119-11-54.

105.3 kilometers (65.4 miles) apart whereas a minimum distance of 115 kilometers (71 miles) is required between co-channel Class A allotments. Therefore, the proposals are mutually exclusive and must be considered comparatively. Accordingly, we shall provide each proponent an opportunity to demonstrate in comments why its community should be preferred. In this regard, the parties should be guided by the allotment criteria set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Petitioners should note that due to the close proximity of the communities, if the comparative factors prove equal, the larger community would be preferred. Therefore, the proponents may wish to determine if other channels may be available to resolve the existing conflict.

3. In consideration of the above, and based upon the interests expressed in providing an additional local FM service to McFarland and Coalinga, California, we will seek comments on the optional proposals to allot Channel 247A to either community. Therefore, the Commission proposes to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, as follows:

City	Channel No	
	Present	Proposed
Coalinga, California	261B	247A, 261B
or		
McFarland, California	275B1	247A, 275B1

4. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

5. Interested parties may file comments on or before November 10, 1997, and reply comments on or before November 25, 1997, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioners' counsel, as follows:

Henry E. Crawford, Esq.  
Law Offices of Henry E. Crawford, Esq.  
1150 Connecticut Avenue, N.W.  
Suite 900  
Washington, DC 20036  
(counsel for Kerner Broadcasting Company)

Gary S. Smithwick, Esq.  
Smithwick & Belendiuk, P.C.  
1990 M Street, N.W.  
Suite 510  
Washington, DC 20036  
(counsel for James K. Zahn)

6. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections

73.202(b) and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

7. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos  
Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

Attachment: Appendix

## APPENDIX

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding:

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments, Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.